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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,355	11/17/2003	Munehiro Tabata	040356-0496	9164
22428	7590	06/30/2005	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			NGUYEN, TU MINH	
			ART UNIT	PAPER NUMBER
			3748	

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/713,355

Applicant(s)

TABATA ET AL.

Examiner

Tu M. Nguyen

Art Unit

3748

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 06 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-13.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Tu M. Nguyen  
6/24/05

Continuation of 11. does NOT place the application in condition for allowance because:

The examiner has to replace the "Official Notice" with a secondary reference even though Applicant did not argue against the "Official Notice" because the policy of the Patent Office requires the examiner to utilize a secondary reference to teach the missing step(s) or element(s) when a final rejection is written.

Applicant argues that Kobayashi et al. do not suggest controlling an air-fuel ratio to be in a lean air-fuel state when a particulate matter trap amount reaches a predetermined amount during the time the air-fuel ratio is rich, such as during SOx poisoning elimination, and then, when the particulate matter trap amount reaches a decreased state, controlling the air-fuel ratio to be rich again, such as to resume SOx poisoning elimination. Instead, Kobayashi discloses a process to eliminate SOx poisoning only after particulate filter regeneration is completed (page 8 of Applicant's Amendment). The examiner respectfully disagrees.

In paragraph 0119, Kobayashi et al. state that "In the second embodiment, the recovery-process terminating means is activated to terminate or inhibit the process to recover the NOx catalyst (17) from the S-poisoning when the particulate-amount detecting means determines that the amount of the accumulated particulate matters is larger than the predetermined threshold value. In this case, the particulate matters are removed by burning or oxidation, and then the S-poisoning recovery process is implemented by the S-poisoning recovery means." This statement is further explained in Figures 4-5 and in paragraph 0101 where it states that "step 550 is provided to determine whether a difference (Pd - Pd') is greater than a predetermined threshold value. If this determination is affirmative, it is determined that the particulate filter (18) is deteriorated or defective. In this case, the process to recover the NOx catalyst (17) from the S-poisoning is terminated." Therefore, Kobayashi et al. clearly disclose or suggest the termination of an on-going SOx-poisoning recovery process of the NOx catalyst (17) in order to regenerate the particulate filter (18). The SOx-poisoning recovery process is resumed when the regeneration of the particulate filter is completed.